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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 20

Application Number: 09/844,627
Filing Date: April 27, 2001
Appellant(s): ABBE, NANCY A.

George L. Kanabe
For Appellant

EXAMINER'S ANSWER

MAILED
APR 29 2004
GROUP 3700

This is in response to the appeal brief filed February 18, 2004.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

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(7) *Grouping of Claims*

The rejection of claims 1-9, 13-17, 19-20, 24 and 26 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

242,805	WOOSTER	6-1881
417,082	PICHEREAU	12-1889
746,264	BARHITE	12-1903
1,147,041	OXLEY	7-1915
4,432,151	MORRIS	2-1984
4,505,059	MORRIS	3-1985
4,927,041	HEPBURN	5-1990
6,062,380	DORNEY	5-2000
6,253,918	GREINER	7-2001

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(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-9, 13-17, 19, 20, 24 and 26 are rejected under 35 U.S.C. 112, first paragraph.

This rejection is set forth in prior Office Action, Paper No. 14.

Claims 1-6, 9, 13, 15, 19, 20 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Oxley (1,147,041). This rejection is set forth in prior Office Action, Paper No. 14.

Claims 1-6, 9, 13, 15, 20, 24 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Morris (4,505,059) (Morris 1) and Morris (4,432,151) (Morris 2). This rejection is set forth in prior Office Action, Paper No. 14.

Claims 1, 3, 5, 9, 15, 19, 24 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Pichereau (417,082). This rejection is set forth in prior Office Action, Paper No. 14.

Claims 1-6, 9, 13-17, 19, 20, 24 and 26 are rejected under 35 U.S.C. 103(a) as unpatentable over Barhite (746,264) in view of Dorney (6,062,380) and Greiner (6,253,918). This rejection is set forth in prior Office Action, Paper No. 14.

Claims 1-6, 9, 13, 15, 20, 24 and 26 are rejected under 35 U.S.C. 103(a) as unpatentable over Wooster (242,805) in view of Dorney (6,062,380) and Greiner (6,253,918). This rejection is set forth in prior Office Action, Paper No. 14.

Claims 1-6, 9, 13, 15, 19, 20 and 24 are rejected under 35 U.S.C. 103(a) as unpatentable over Oxley (1,147,041) in view of Wooster (242,805). This rejection is set forth in prior Office Action, Paper No. 14.

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Claims 7, 8 and 14 are rejected under 35 U.S.C. 103(a) as unpatentable over Wooster (242,805) in view of Dorney (6,062,380) and Greiner (6,253,918) as applied to claim 1 and 5 above, and further in view of Hepburn (4,927,041). This rejection is set forth in prior Office Action, Paper No. 14.

Claims 7, 8 and 14 are rejected under 35 U.S.C. 103(a) as unpatentable over Morris (4,505,059) (Morris 1) or Morris (4,432,151) (Morris 2) in view of Hepburn (4,927,041). This rejection is set forth in prior Office Action, Paper No. 14.

Claim 14 is rejected under 35 U.S.C. 103(a) as unpatentable over Oxley (1,147,041) or Oxley (1,147,041) in view of Wooster (242,805). This rejection is set forth in prior Office Action, Paper No. 14.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as unpatentable over Morris (4,505,059) (Morris 1) or Morris (4,432,151) (Morris 2) in view of Barhite (746,264). This rejection is set forth in prior Office Action, Paper No. 14.

(11) *Response to Argument*

Appellant has grouped all claims together. If either claim 1 or claim 26 is deemed unpatentable, then all of the claims of the rejection fall together. Claims 1 and 26 seem particularly broad since appellant doesn't claim the label in combination with the food storage unit. A label is not limited to a piece of paper with writing placed thereon but includes the contents of the container when viewable from the outside, therefore, ink, ice, business cards and bakery articles are all capable of labeling or identifying the contents of the container.

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112, First Paragraph

Translucent materials preclude a clear view of objects viewed therethrough. Transparent materials allow a clear view of objects viewed therethrough. Appellant should not be able to first argue that translucent means that objects viewed therethrough are clearly visible, then argue the opposing position that the transparent showings of the prior art are not translucent because the objects viewed therethrough are clearly visible rather than obscured.

102(b) Rejection: Oxley

The walls E and F are fixed because the backward extending members G, G' wedge the partition F tightly against the edges of walls A and B. The position of walls E and F are fixed because they will not move in this configuration due to the friction fit of all the wall elements. The wall element F, however, is removable. When the wall element F is removed access is provided to the compartments formed by members A and B from the inside, the articles C can be removed or replaced and the articles define a label by identifying the contents of the major portion of the box. The label container area is accessible by a user for the insertion of a label. The label support member is physically attached to the inner and outer walls by a friction fit of wall F being wedged within the box to have a snug fit.

102(b) Rejection: Morris 1 and Morris 2

The only place the word "food" appears in the claims is in the preamble. The bodies of the claims never relate the structure of the container to a specific interaction with food. Therefore, the word "food" seems to indicate that the storage unit is intended to be used for food. Food is not claimed in combination with the unit. Containers for other articles not limited to

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food must be considered. Figure 1 of both Morris patents disclose that the storage unit includes condiment compartments 16 and seem to hold items such as salt, pepper and sugar or other equivalent sweeteners. These condiments are food.

The label support member is ridge members 46 glued to the support member 38 and in friction fit contact with the outer transparent wall 32. The channel's label container area is accessed when the tube 12 and the associated side pieces 32 are lifted to expose the business cards for removal and insertion.

102(b) Rejection: Pichereau

The lid of Pichereau seals three out of four compartments. The claims don't require all compartments to be closed or sealed. Appellant's statement that the examiner should look toward the specification and claims to read limitations (not present in the claims) into the claims is not well taken. The claims never state that the lid seals an "entire" container or that the lid covers the container in an "airtight" manner to keep food fresh and avoid freezer burn.

Appellant refers to the top and bottom of the ink stand as being formed of glass and suggests that the glass material is not capable of sealing. The glass seals by preventing the ink wells from becoming contaminated by any falling debris or splashing liquid that may have entered the compartments had the cover not been there to block passage. The seal doesn't have to be gas tight or liquid tight. The cover blocks passage of substantially all air and liquid.

Appellant discusses how the central chamber of Pichereau can't hold food. There is absolutely no claim limitation that requires a central chamber for holding food. Appellant has focused discussion on the central chamber, while it is clear that the three peripheral chambers are capable of holding food.

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103(a) Rejection: Barhite in view of Dorney and Greiner

Appellant has misinterpreted Barhite. Barhite includes horizontal wall 77 defining the label support member spaced above the bottom and physically attached to the inner and outer walls. Appellant's interpretation of the stays 28 as forming label support members had never occurred to the examiner. Now considered, the stays 28 seem to meet the limitations set forth in the claims because there is no limitation pertaining to how the label is support, for example, in an upright manner. A label placed on the stay would not fall to the bottom of the channel.

Appellant argues that Barhite teaches away from a transparent/translucent wall modification due to an increase in heat radiation. The increase of heat radiation because light is entering the channel is negligible in comparison to the amount of heat required to melt a substantial quantity of ice therein.

103(a) Rejection: Wooster in view of Dorney and Greiner

There is no limitation, that a label has to stand upright in the label container area.

As discussed previously with respect to the Pichereau reference, the presence of a hole doesn't preclude a cover from closing and sealing the container top

Appellant argues that Wooster teaches away from a transparent/translucent wall modification due to an increase in heat radiation. The increase of heat radiation because light is entering the channel is negligible in comparison to the amount of heat required to melt a substantial quantity of ice therein. There is absolutely no discussion of the criticality of heat radiation within Wooster.

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103(a) Rejection: Oxley in view of Wooster

Appellant states that the modification would eviscerate Oxley's invention because it requires the removal of a display shelf. The motivation changes the access from the inside of the chamber to the top of the chamber. There is no need for the partition F to be adjusted since access is provided through the top.

Other 103 Rejections:

Appellant has grouped all claims together. Therefore, if either claims 1 or 26 are not affirmed after consideration of the previously argued claims, then the rejections that pertain to dependent claims only are moot.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Stephen J. Castellano

Primary Examiner


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sjc

April 28, 2004

Conferees

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